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16 Ronald Wood

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSÉ DIVISION

20 RONALD WOOD

21 Plaintiff,

22 v.

23 DANIEL MORALES,
24 INDIVIDUALLY AND AS AN
25 OFFICER OF THE SAN JOSE
26 POLICE DEPARTMENT; OFFICER
27 MARK MINTEN, INDIVIDUALLY
28 AND AS A POLICE OFFICER OF
THE SAN JOSE POLICE
DEPARTMENT, SERGEANT
DARRELL UNGER, INDIVIDUALLY
AND AS A POLICE OFFICER OF
THE SAN JOSE POLICE
DEPARTMENT

Defendants.

CASE NO: CV 16-06621

COMPLAINT FOR DAMAGES

1. Fourth Amendment-Excessive Force (42 U.S.C §1983)
2. Fourth Amendment-Excessive Force (42 U.S.C §1983)
3. Battery
4. Negligence
5. Intentional Infliction of Emotional distress

(JURY TRIAL DEMANDED)

CV 16-06621

1 Plaintiff, Ronald Wood, hereby alleges as follows:

2 **INTRODUCTION**

3 1. This civil rights and state tort action seeks compensatory and punitive damages
4 from Defendants for violating various rights under the United States Constitution and
5 state law in connection with the officer involved shooting of Plaintiff, Ronald Wood on
6 August 17, 2015. Plaintiff, Ronald Wood, now brings this case to expose the
7 wrongdoing of the defendant and to vindicate his civil rights.

8
9 **JURISDICTION AND VENUE**

10 2. This court has subject matter jurisdiction pursuant to 42 U.S.C. §1983; 1981, 28
11 U.S.C. §§ 1331, 1343 and 2201. The Court has pendent jurisdiction and supplemental
12 jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. §
13 1367.

14 3. On March 8, 2016, Mr. Wood filed an administrative claims for damages under
15 the California Tort Claims Act Claim with the City of San Jose, in compliance with
16 California Government Code § 910 et seq., The City of San Jose rejected the claim on
17 May 19, 2016. Therefore, this claim is timely filed.

18
19 **INTRADISTRICT ASSIGNMENT**

20 4. Pursuant to Northern District Civil Local Rule 3-29(c) intradistrict assignment to
21 the San Jose Division of the Court is proper because a substantial part of the events or
22 omissions giving rise to the claims herein occurred in the County of Santa Clara.
23 Venue therefore lies in the United States District Court for the Northern District of
24 California, San Jose Division.

25
26 **PARTIES**

27 5. Plaintiff, Ronald Wood is, and at all relevant times herein mentioned, was a
28 citizen of the State of California and a resident of the County of Santa Clara.

CV 16-06621

6. Defendant Officer Daniel Morales (“Officer Morales” or “Defendant-Morales”), sued in both his individual and official capacities is a resident of California on information and belief, and at all relevant times was employed by the San Jose Police Department (hereinafter “SJPD”). All actions taken by Officer Morales were performed while working as an officer of the SJPD under color of law.

7. Defendant Officer Mark Minten (“Officer Minten” or “Defendant-Minten”), sued in both his individual and official capacities is a resident of California on information and belief, and at all relevant times was employed by the San Jose Police Department (hereinafter “SJPD”). All actions taken by Officer Minten were performed while working as an officer of the SJPD under color of law.

8. Defendant Officer Sergeant Darrell Unger (“Segeant Unger” or “Defendant Unger”), sued in both his individual and official capacities is a resident of California on information and belief, and at all relevant times was employed by the San Jose Police Department (hereinafter “SJPD”). All actions taken by Sergeant Unger were performed while working as an officer of the SJPD under color of law.

9. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each and every defendant was the agent, servant, employee, and/or representative of each and every other defendant and, in doing the things complained of herein, was acting within the scope of that agency, service, employment and in concert, and/or representation, and that each and every defendant is jointly and severally responsible and liable to the plaintiff for the damages hereinafter alleged.

10. Plaintiff is informed and believe and thereon alleges that Defendants are legally responsible and liable for the incident, injuries, and damages set forth herein, and that the defendants proximately caused said incident, injuries, and damages by reason of his violation of plaintiff’s constitutional and legal rights, negligence, breach of duty, whether based upon agency, employment or control or upon any other act or omission.

11. Defendants caused and are responsible for the unlawful conduct described herein and the resulting injuries by, among other things, personally participating in the

CV 16-06621

1 unlawful conduct and/ or with deliberate indifference to plaintiff's rights.

2 12. In doing the acts and/or omissions alleged herein, Defendants acted under color of
3 authority and/or under color of law and pursuant to their respective authorities as police
4 officers with the San Jose Police Department.

5 13. Defendants are guilty of fraud, oppression, and/or malice that would justify the
6 imposition of punitive and exemplary damages.

7
8 **FACTUAL ALLEGATIONS**

9 14. On September 24, 2015, Officer Morales responded to a welfare check at 6130
10 Monterey Highway, Space 246. He was informed by multiple parties that victim
11 Ronald Wood was acting strangely and had left the area. Officer Morales decided to
12 conduct a search for Mr. Wood.

13 15. Officer Morales drove north on Monterey Highway and observed an individual
14 sitting on the curb just north of South Lake Drive. Officer Morales contacted the
15 individual, whom he believed to be Mr. Wood, by parking his patrol vehicle next to
16 where Mr. Wood was standing.

17 16. Officer Morales remained in his patrol vehicle and spoke to Mr. Wood through
18 the passenger's window that had been rolled down. During their conversation, Mr.
19 Wood reached into the officer's vehicle to access a bag left open on the passenger seat.
20 Officer Morales responded to this action by exiting his vehicle, leaving the driver's
21 side door open.

22 17. Officer Morales moved to the rear of the vehicle, and contacted Mr. Wood. As
23 Mr. Wood moved away from the vehicle, Officer Morales deployed his Taser and used
24 pepper spray to attempt to stop Mr. Wood movement to the rear of the vehicle.

25 18. After being Tased and pepper-sprayed, Mr. Wood moved toward the open driver's
26 side door of the vehicle. Prior to his shift, Officer Morales had loaded and locked his
27 shotgun. Officer Morales states that he heard Mr. Wood attempt to remove the shotgun
28 from its lock.

1 19. Mr. Wood then turned to face Officer Morales, with his arms and hands in plain
2 view. At this point, though Mr. Wood was unarmed and not advancing, Officer
3 Morales discharged his duty weapon five times without warning, striking Mr. Wood.
4 At no time prior to being shot was Mr. Wood a threat to Officer Morales.

5 20. After being shot five times in the chest and stomach area, Mr. Wood was lying in
6 the street next to the patrol car seriously wounded. Arriving officers gave Mr. Wood
7 verbal commands to move his hands away from his body and to crawl towards them.
8 Because of his injuries Mr. Wood could not comply.

9 21. Eventually, Sergeant Unger ordered Officer Minten to shoot Mr. Wood with a
10 non-lethal .40 mm rifle. The projectile from Officer Minton struck Mr. Wood in the
11 chest as he was lying down on the street, wounded and not a threat to the officers.

12 22. At this point, Sergeant Unger realized that Mr. Wood was bleeding out and in
13 critical condition and could not crawl toward the officers. Sergeant Unger then had an
14 arrest team move in and placed Mr. Wood into handcuffs.

15 23. The force used by Officer Morales, in shooting Ronald Wood while he was
16 unarmed and not a threat to him was excessive, unreasonable and resulted in plaintiff
17 suffering serious injuries.

18 24. The order issued by Sergeant Unger to Officer Minten to shoot Ronald Wood with
19 the 40 mm rifle while he was wounded, in critical condition, unarmed and not a threat
20 to the officers was excessive, unreasonable and resulted in plaintiff suffering serious
21 injuries.

22 25. The force used by Officer Minten , in shooting Ronald Wood with the 40 mm rifle
23 while he was wounded, in critical condition, unarmed and not a threat to the officers
24 was excessive, unreasonable and resulted in plaintiff suffering serious injuries.

25
26 **FIRST CLAIM FOR RELIEF**

27 **Fourth Amendment-Excessive Force (42 U.S.C. § 1983)**

28 **(Defendant-Officer Morales)**

CV 16-06621

1 26. Plaintiff hereby re-alleges and incorporates by reference each and every allegation
2 contained in paragraphs 1 through 25 of this Complaint.

3 27. Officer Morales' used excessive force against Plaintiff when he shot him multiple
4 times without warning. Defendant's unjustified shooting deprived the rights of
5 Plaintiff, to be free from unreasonable searches and seizures under the Fourth
6 Amendment to the United States Constitution and applied to state actors by the
7 Fourteenth Amendment.

8 28. As a result of Defendant's conduct, Plaintiff has suffered significant physical
9 harm, emotional harm and pain and suffering.

10 29. Defendant Morales' acts and/or omissions were done willfully, deliberately,
11 maliciously, and with reckless or deliberate indifference or conscious disregard to
12 Plaintiff's constitutional rights, thereby entitling plaintiff to an award of exemplary or
13 punitive damages.

14 30. The shooting was excessive and unreasonable, especially because Plaintiff posed
15 no immediate threat of death or serious bodily injury at the time of the incident.
16 Further, Defendant Morales' use of deadly force violated his training and standard
17 police officer training.

18
19 **SECOND CLAIM FOR RELIEF**

20 **Fourth Amendment-Excessive Force (42 U.S.C. § 1983)**

21 **(Defendant-Sergeant Unger and Defendant-Officer Minten)**

22 31. Plaintiff hereby re-alleges and incorporates by reference each and every allegation
23 contained in paragraphs 1 through 30 of this Complaint.

24 32. Officer Minten used excessive force against Plaintiff when he shot Plaintiff with
25 his non-lethal 40 mm rifle after being ordered to do so by Sergeant Unger. Plaintiff
26 was critically wounded and unable to comply with the Defendants' verbal commands
27 at the time he was shot. Defendant Minten's unjustified shooting of Plaintiff as he was
28 critically wounded deprived the rights of Plaintiff, to be free from unreasonable

CV 16-06621

1 searches and seizures under the Fourth Amendment to the United States Constitution
2 and applied to state actors by the Fourteenth Amendment.

3 33. As a result of Defendant Minten's and Defendant Unger's conduct, Plaintiff has
4 suffered significant physical harm, emotional harm and pain and suffering.

5 34. Defendants' acts and/or omissions were done willfully, deliberately, maliciously,
6 and with reckless or deliberate indifference or conscious disregard to Plaintiff's
7 constitutional rights, thereby entitling plaintiff to an award of exemplary or punitive
8 damages.

9 35. The shooting of Plaintiff by the 40 mm less than lethal rifle was excessive and
10 unreasonable, especially because Plaintiff was critically wounded and posed no
11 immediate threat of death or serious bodily injury at the time the force was used.
12 Further, Sergeant Unger and Officer Minten's use of 40 mm rifle violated their training
13 and standard police officer training.

14
15 **THIRD CLAIM FOR RELIEF**

16 **BATTERY**

17 **(Against All Defendants)**

18 36. Plaintiff re-alleges and incorporates by reference each and every allegation
19 contained in paragraphs 1 through 35 in this complaint.

20 37. Plaintiff asserts the claims of battery against Defendant-Officers and Sergeant
21 Unger based upon the unlawful touching of Plaintiff which was the direct and legal
22 cause of his injuries. At all times during the unlawful touching of the Plaintiff,
23 Defendant-Officers and Sergeant Unger were acting within the course and scope of
24 their employment with the SJPd. The non-consensual contact by Defendants against
25 the Plaintiff amounted to unreasonable force and included, but was not limited to,
26 shooting him five times and the improper and excessive use of firearm and shooting
27 him with the 40 mm rifle after he was critically wounded.

28 ///

38. Plaintiff is informed and believes and thereon alleges that the aforementioned acts of the Defendants were willful, malicious, intentional, oppressive, reckless and/or was done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages in an amount to be determined at time of trial.

39. The battery included the repeated shooting of Plaintiff by Defendant-Morales with his SJPd issued firearm and the shooting by Defendant-Minten with his SJPd 40mm rifle.

40. As a direct and legal cause of the acts and omissions of this defendant, Plaintiff has suffered damages, including without limitation, loss of earnings, pain and suffering, emotional distress, attorneys' fees, costs of suit, and other pecuniary losses not yet ascertained. Plaintiff is seeking punitive damages under the battery cause of action.

FOURTH CLAIM FOR RELIEF

(NEGLIGENCE)

(Against All Defendants)

41. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 40 in this complaint.

42. Defendants were negligent, and/or reckless and such conduct caused harm to Plaintiff. Defendants were negligent and/or reckless in performing their duties and failed, neglected, and/or refused to properly and fully discharge their responsibility by, among other things:

- (a) Using unnecessary, excessive force against Plaintiff, which would not have been applied by a reasonable police officers under the same circumstances;
- (b) Proceeding to effectuate a welfare check and detention by shooting the a gun and 40 mm rifle Plaintiff while he was unarmed;
- (c) Grossly miscalculating the inherent dangerousness of the situation and

1 thereby creating a situation in which serious bodily harm or death would likely
2 result;

3 (d) Failing to practice and follow sufficient police procedures to ensure the
4 officers and the public's safety;

5 (e) Failing to exercise the proper method of arresting and detaining Plaintiff
6 that resulted in the unnecessary escalation of force; and

7 43. As a result of Defendants' conduct, Plaintiff has suffered significant physical and
8 emotional harm, and pain and suffering.

9
10 **FIFTH CLAIM FOR RELIEF**

11 **(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

12 **(Against All Defendants)**

13 44. Plaintiff re-alleges and incorporates by reference each and every allegation
14 contained in paragraphs 1 through 43 in this complaint.

15 45. The conduct of Defendant Officer-Morales, Defendant-Officer Minten and
16 Defendant-Sergeant Unger as set forth herein, was extreme and outrageous and beyond
17 the scope of conduct that should be tolerated by citizens in a democratic and civilized
18 society. Defendants committed the aforementioned extreme and outrageous acts with
19 the intent to inflict severe emotional distress upon Plaintiff.

20 46. As a proximate result of said defendants' willful, intentional and malicious
21 conduct, plaintiff suffered severe emotional distress. Therefore, plaintiff is entitled to
22 an award of punitive damages against said defendants/ plaintiff has suffered injuries
23 and damages hereinafter set forth.

24 **PRAYER**

25 WHEREFORE, Plaintiff prays for relief, as follows:

- 26 A. For general damages according to proof;
27 B. For special damages according to proof;
28 C. For punitive damages against defendant officer according to proof.

- 1 D. For reasonable attorney's fees pursuant to 42 U.S.C. Sections 1983
2 and 1988;
3 E. For costs of suit herein incurred; and
4 F. Grant such other and further relief as the Court may deem just and
5 proper.
6

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a trial by jury.
9

10 DATED: November 15, 2016

LAW OFFICE OF MORALES & LEAÑOS

11
12
13 By: /s/ Jaime A. Leños

14 JAIME A. LEAÑOS

Attorney for Plaintiff, Ronald Wood
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16

17 DATED: November 15, 2016

JACHIMOWICZ | POINTER

18
19 By: /s/ Joshua R. Jachimowicz

20 JOSHUA R. JACHIMOWICZ

Attorney for Plaintiff, Ronald Wood
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